BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

STEVEN DENMAN)
Claimant VS.	
VIM TRAILERS MANUFACTURING, INC. Respondent AND) Docket No. 201,163
TRAVELERS INSURANCE COMPANY Insurance Carrier	

ORDER

Claimant appeals from a Preliminary Hearing Order of June 20, 1995, wherein Administrative Law Judge John D. Clark granted claimant benefits finding claimant had carried his burden of proof regarding notice of injury pursuant to K.S.A. 44-520.

ISSUES

Whether claimant provided notice to the respondent of an accidental injury on the dates alleged as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds the issue above listed is appealable from a preliminary hearing order pursuant to K.S.A. 44-534a and as such is properly before the Appeals Board.

Claimant alleges injury to his back in November 1994 and again on January 19, 1995, while employed with the respondent. Claimant acknowledges that in November 1994 he did not tell his employer of the accident stating that he did not feel comfortable telling the people he worked for that he had hurt himself.

The injury to claimant on January 19, 1995, occurred as claimant was emptying fifty-five (55) gallon trash barrels. While holding a trash barrel, claimant developed a sudden pain in his back. This incident was witnessed by claimant's supervisor, Mr. Jeff Elliott, who ran over and helped claimant with the barrel. Claimant was instructed by Mr. Elliott to complete an accident report. Claimant's Exhibit 2 to the preliminary hearing was identified as an accident report form, which claimant alleges was filled out and signed by Mr. Jeff Elliott. The testimony of the claimant regarding the preparation of this form is uncontroverted. Uncontradicted evidence, which is not improbable or unreasonable, may

not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The Appeals Board finds that while claimant admittedly did not report the November 1994 injury to his back to the respondent in a timely fashion, the injury of January 19, 1995, was reported to claimant's supervisor. K.S.A. 44-520 requires notice of an accident stating the time, place and particulars thereof within ten (10) days after the date of accident "except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

In this instance, the claimant stated his supervisor, Mr. Jeff Elliott, had actual knowledge of the accident being present at the time of the incident. The Appeals Board finds that claimant provided notice to the respondent of the January 19, 1995 accident as required by K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated June 20, 1995, shall be and is affirmed in all respects.

Dated this day of Septe	ember, 1995.
B	BOARD MEMBER
B	BOARD MEMBER
B	BOARD MEMBER

c: Paul D. Hogan, Wichita, Kansas William L. Townsley III, Wichita, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director

IT IS SO ORDERED.